

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMOTHY LINEHAN, on behalf of Plaintiff and a)	
class,)	
)	No. C15-1012-JCC
Plaintiff,)	
)	
vs.)	KING COUNTY'S MOTION FOR
)	SUMMARY JUDGMENT DISMISSAL
ALLIANCEONE RECEIVEABLES)	PURSUANT TO FRCP 56
MANAGEMENT, INC.,)	
)	NOTE FOR MOTION CALENDAR:
Defendant.)	FRIDAY, APRIL 7, 2017
)	

I. INTRODUCTION AND STATEMENT OF RELIEF SOUGHT

King County was joined in these consolidated cases pursuant to an order of this Court. The Court's order for joinder was based on its determination that the issues in this litigation put the validity of a King County District Court General Administrative Order (GAO) in question. For that reason and because no party has requested relief against King County, the County respectfully requests that it be dismissed from each of the consolidated cases.

II. RELEVANT FACTS

These consolidated cases were brought by plaintiffs who assert defendant collection agencies and attorneys violated the Fair Debt Collection Practices Act ("FDCPA") in filing

1 collection actions against them in King County District Court (KCDC). Dkt. 169 (*Mosby*
 2 *Revised Second Amended Complaint*); Dkt. 186 (*Simmons Revised Complaint*); Dkt. 205-1
 3 (*Jones Corrected Revised Second Amended Complaint*); Dkt. 246 (*Auxier Corrected Second*
 4 *Amended Complaint*); Dkt. 286 (*Linehan Amended Complaint*). Plaintiffs claim defendants
 5 violated the FDCPA's requirement that a debt collector bringing a legal action against a
 6 consumer "bring such action only in the judicial district or similar legal entity – (A) in which
 7 such consumer signed the contract sued upon; or (B) in which such consumer resides at the
 8 commencement of the action." 15 U.S.C. § 1692i(a)(2). Plaintiffs assert defendants brought
 9 collection actions against them in divisions of KCDC that violated this provision of the FDCPA.

10 In motions to dismiss, defendants argued in part that the KCDC divisions in which they
 11 brought the legal actions against plaintiffs were set by KCDC General Administrative Order
 12 (GAO) 13-10. Dkt. No. 40. This order pre-assigned civil collection cases filed by the highest-
 13 volume filers to certain divisions of the KCDC. *See* Judge Harn Declaration at ¶4, Ex. A. As
 14 stated in the GAO, its purpose was to promote prompt and efficient customer service. *Id.*

15 The customers referred to in the GAO were all customers of the court – plaintiffs,
 16 defendants, witnesses and attorneys. *See* Judge Harn Declaration at ¶5, Ex. A. The GAO
 17 promoted good service to these customers in part by balancing judicial caseload and ensuring
 18 that the judges hearing civil cases in each division were able to manage their dockets and reduce
 19 the time litigants had to wait for their cases to be called. *Id.* at 1. GAO 13-10 also consolidated
 20 cases filed by the highest volume civil collection filers in particular divisions of the court so that
 21 the collection agency attorneys could appear for their cases in one location. *Id.* This was a
 22 benefit to the collection agency attorneys, but it also benefited defendants who otherwise might
 23 have had to wait for a collection agency attorney to arrive from another division's courthouse for

1 that defendant's case to be heard. *Id.* at 1-2. KCDC has adopted similar administrative orders
2 for other types of cases including state criminal and infraction matters. *Id.* at 2 and Ex. B (GAO
3 15-05 (cases assigned to specific courthouses according to police agency)).

4 In ruling on different motions to dismiss filed by defendants in these consolidated cases,
5 the Court reached several conclusions relevant to GAO 13-10. First, the Court concluded that
6 the divisions of KCDC constitute judicial entities for purposes of § 1692i of the FDCPA. Dkt.
7 26 at 4. Second, the Court concluded that to the extent the GAO is inconsistent with the
8 FDCPA, it is preempted. Dkt. 26 at 3.

9 In their motions to dismiss, defendants Merchants Credit Corp. and Robert Friedman
10 argued that if the cases against them were not dismissed, King County should be joined as a
11 necessary party under Fed R. Civ. P. 19. (Dkt. No. 40 at 14-15; Dkt. No. 134 at 15-16.) The
12 defendants argued that failure to join King County would impair or impede King County's
13 ability to protect its interest in court rules and orders.

14 Plaintiffs argued against joinder citing to the fact that King County chose not to claim an
15 interest in the subject relating to the litigation under Fed. R. Civ. P. 19(B). Dkt. 51 at 3; Dkt. No.
16 146 at 15. Nonetheless, the Court ordered joinder citing to a Ninth Circuit case holding that
17 where a lawsuit could result in the invalidation or modification of a public entity's ordinances,
18 rules, regulations or practices, the public entity has an interest. Dkt. 162 at 15 (quoting *Equal*
19 *Emp't Opportunity Comm'n v. Peabody West. Coal Co.*, 610 F.3d 1070, 1082 (9th Cir. 2010)).
20 Applying *Peabody* to the present cases, the Court stated:

21 Here, the Court has determined that King County GAOs are preempted to the
22 extent they conflict with federal law; thus, their validity is in question. Under
23 *Peabody*, King County has an interest in this lawsuit.

Dkt. 162 at 15.

King County was thereafter served with summonses and complaints in the consolidated cases and the County timely filed answers. In January and early February, plaintiffs took the depositions of two King County officials, Judge Peter Nault and Judge Corinna Harn.

On February 8, 2017, KCDC rescinded GAO 13-10. *See* Judge Harn Declaration at ¶7, Ex. B. The defendant collection agencies and attorneys are no longer directed by court administrative order to file their cases in a particular division of KCDC.

III. ISSUE PRESENTED

Should King County be dismissed from these consolidated cases where there is no longer a possibility that the litigation could result in the invalidation or modification of KCDC administrative orders and where no parties have requested relief against King County?

IV. ARGUMENT

A. Standard on summary judgment.

Summary judgment is proper when the pleadings, answers to interrogatories, admissions and any affidavits, taken together, “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. Pr. 56(c). The Supreme Court has stated that the Rule does not require the moving party to produce evidence showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Rather, the moving party need only point out that the non-moving party lacks evidence to support his case. *Id.*

In response to the motion, the non-moving party may not merely rely on his pleadings, *id.* at 324, but must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Fed. R. Civ. P. 56(e) (emphasis added)). “[T]here is no issue for

1 trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict
2 for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d
3 202 (1986) (citing *First Nat’l Bank of Arizona v. City Services Co.*, 391 U.S. 253, 88 S.Ct. 1575,
4 20 L.Ed.2d 569 (1968)).

5 For purposes of the present motion, there is no genuine issue as to any material fact.
6 King County no longer has any interest that would be impaired or impeded by the disposition in
7 these consolidated cases. Summary judgment dismissal of King County from these cases is
8 therefore appropriate.

9 B. The District Court no longer has an interest to be protected.

10 In entering its orders in the present cases, the Court has ruled that for purposes of the
11 FDCPA, the divisions of KCDC are the relevant bodies. And the Court has ruled that to the
12 extent a KCDC order conflicts with the FDCPA, it is preempted. Based on these rulings, KCDC
13 stopped enforcing the pre-assignment provisions of GAO 13-10 and on February 8, 2017,
14 rescinded the order in its entirety. See Judge Harn Declaration at ¶7, Ex. B.

15 Though KCDC adopted GAO 13-10 and the preceding pre-assignment orders with the
16 interests of its customers and the efficient use of government resources in mind, it has now
17 adapted its practices to comply with the Court’s rulings in this case. KCDC is no longer pre-
18 assigning civil collection cases to specific divisions of KCDC and the present consolidated cases
19 no longer present a challenge to the validity of a KCDC court order.

20 The Court joined King County in these consolidated cases because of the County’s
21 interest in its GAO. That GAO no longer exists and neither does the County’s interest under
22 Fed. R. Civ. P. 19.

1 C. No party is seeking relief against the County.

2 Pursuant to the Court order, plaintiffs in these consolidated cases added King County as
3 defendant. In each case, King County was named by plaintiffs as a “nominal defendant” with no
4 relief being sought by any plaintiff against the County. *See* Dkt. 169 at 1-2; Dkt. 186 at 2; Dkt.
5 205-1 at 1-2; Dkt. 246 at 1-2; Dkt. 286 at 2-3. As a result, the County’s dismissal from these
6 consolidated cases will not affect any party’s ability to get the relief they seek in these cases.

7 **V. CONCLUSION**

8 For the reasons set forth above, King County respectfully requests that it be dismissed
9 from each of these consolidated cases.

10 DATED this 16th day of March, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2017, I electronically filed the foregoing document, Declaration of Judge Corinna Harn in support of King County's Motion for Summary Judgment Dismissal Pursuant to FRCP 56 and [Proposed] Order with the Clerk of the Court using the USDC E-Filing System which will send notification to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of March, 2017.

s/ Heidi Lau
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